

BOARD OF APPEALS CASE NO. 5285

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BEFORE THE

APPLICANT: Paul Brown

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ZONING HEARING EXAMINER

**REQUEST: Variance to allow an addition within
the required side yard setback in the R3/CDP
District; 750 Towne Center Drive, Joppa**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 9/18/02 & 9/25/02

HEARING DATE: October 28, 2002

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Record: 9/20/02 & 9/27/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Paul A. Brown, is requesting a variance, pursuant to Ordinance 6, Section 10.05, of the 1957 Zoning Ordinance, to allow an addition within the required 10 foot side-yard, total 22 foot , total of 20 feet proposed in an R3 Residential District/Community Development Project (R3/CDP).

The subject parcel is located at 750 Towne Center Drive, Rumsey Island, Joppa, Maryland 21085, and is more particularly identified on Tax Map 68, Grid 1F, Parcel 14, Lot 26. The parcel consists of 10,500 square feet, is zoned R3/CDP and is entirely within the First Election District.

Mr. Paul Brown appeared and testified that he wants to add a carport that will cover an existing concrete pad. The house is centered on the property and each side is approximately 17 feet from the property line. The driveway is currently 10 feet wide and 2 feet from the side of the house. The outer portion of the carport roof will be 14 feet wide and 3 feet from the property line. The poles to hold the carport roof need to be situated outside the pad area. Mr. Brown indicated that he wishes to protect his automobile from the weather as well as protect occupants of the vehicle from rain and snow while entering or leaving house.

Mr. Edward Steere appeared and qualified as an expert land planner. He testified that the parcel is zoned R3/CDP and that carports are generally permitted in the R3 and CDP districts. The western side of the Applicant's home has a chimney and the eastern side has an existing driveway where the carport is planned.

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Mr. Steere pointed out that there are sheds on the parcels to either side of the Applicant's home and that there is no other practical location for the carport. The house is located one (1) foot below the floodplain so any construction to the rear of the house would require construction in the floodplain. The witness pointed out that construction between the house and the water's edge is generally discouraged. In the opinion of the witness, the parcel is unique because the floodplain extends to 50% of the parcel, unlike what is normally associated with other R3 properties. Additionally, the witness pointed out that other accessory structures, like sheds, only require a 3 foot setback. Finally, Mr. Steele opined that no adverse impact would result from a grant of the variance because the closest neighbor has no windows on the carport side of the house, the existing pad is already used to park a car – this request is simply to add a roof over the same parking area and the sheds block the view of neighbors.

The Department of Planning and Zoning was represented at the hearing by Anthony McClune, Manager, Division of Land Management. According to McClune, the parcel is not unique. The house is centered on the property like the other houses along the waterfront in this neighborhood; all of them are subject to floodplain issues; there is a uniform streetscape with houses more or less enjoying the same setbacks to the front and the sides. While McClune admitted that other structures, like sheds, are only subject to a 3 foot side yard setback, he indicated that the spirit of the ordinance was to maintain open space between houses and that creation of a carport in this neighborhood would result in a reduction of open space not contemplated or desired by the Zoning Ordinance. Since the circumstances of each of the homes in this neighborhood is more or less the same, McClune believed that approval of the variance would result in a blanket approval for each house in this neighborhood to add carports, attached garages and other non-complying accessory structures. Lastly, McClune stated that a carport could often have greater impacts than a shed since similar materials are stored in both carports and sheds but in a shed they are closed and not visible while a carport allows open view of various stored items. The Department recommended disapproval of the request finding that the parcel was not unique, that adverse impacts would result from approval and that the spirit and intent of the Zoning Code would be materially impacted by the approval.

No other opponents appeared.

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CONCLUSION:

The Applicant, Paul A. Brown, is requesting a variance, pursuant to Ordinance 6, Section 10.05, of the 1957 Zoning Ordinance, to allow an addition within the required 10 foot side-yard, total 22 foot, total of 20 feet proposed in an R3 Residential District/Community Development Project (R3/CDP).

The Harford County Code, pursuant to 267-11 permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

In the opinion of the Hearing Examiner, the Applicant has failed to demonstrate that this parcel is unique compared to other parcels in the neighborhood. Each home is much like the other, streetscape is uniform, each backs up to the water and is subject to floodplain limitations and each home is more or less centered.

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property’s uniqueness exists.” Cromwell v. Ward, 102 Md. App. 691 (1995).

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While the Applicant argues that this parcel is unique compared to other R3 properties, it is clear that the appropriate comparison is to other surrounding or neighboring properties. Applying that comparison, the Applicant has failed to demonstrate uniqueness.

Further, the Zoning Ordinance differentiates between accessory structures like sheds and accessory structures that are attached to the house, like carports. Different setbacks apply and that is a reasonable conclusion based on the intent of the ordinance in providing open space between homes and accessory structures. The Hearing Examiner also agrees with The Department of Planning and Zoning that carports can have more visual impact than sheds and that approval of this request could result in a blanket approval of other carports in this neighborhood, an undesirable result from a zoning perspective.

For the foregoing reasons, the Hearing Examiner recommends that the request be denied.

Date NOVEMBER 25, 2002

William F. Casey
Zoning Hearing Examiner